International Brotherhood of Electrical Workers, Local 3 *and* Sign Pictorial & Display Union, Local 230, International Brotherhood of Painters and Allied Trades, AFL–CIO *and* Transportation Displays, Inc. Cases 2–CD–809 and 2–CD–810

November 26, 1991

DECISION AND ORDER QUASHING NOTICE OF HEARING

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT AND RAUDABAUGH

This is a proceeding under Section 10(k) of the National Labor Relations Act following charges by Transportation Displays, Inc. (the Employer) alleging that Local 3, of the International Brotherhood of Electrical Workers, AFL–CIO (Local 3) had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Sign Pictorial & Display Union, Local 230, International Brotherhood of Painters and Allied Trades, AFL–CIO (Local 230) and that Local 230 had violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing or requiring the Employer to assign certain work to employees it represents rather than to employees represented by Local 3.

The hearing was held before Hearing Officer Laura A. Sacks on June 25, July 25 and 26, 1991, in New York, New York. All parties appeared and were accorded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues. Thereafter briefs were filed by Local 3, Local 230, and the Employer.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, a corporation doing business in the State of New York, installs and maintains billboards and various other forms of advertising displays including advertisements in phone kiosks throughout the United States and, in particular, New York City and its surrounding metropolitan area. The Employer derives gross revenue from sales or the performance of services directly to customers located outside of the State of New York in excess of $50,000. We find that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Local 3 and Local 230 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

The Employer has collective-bargaining agreements with Local 230 and Local 3. Prior to 1988, the Employer subcontracted out the work of installing and maintaining the illuminated copy ads in telephone kiosks from its phone kiosk division. Pursuant to this contract, the subcontractor employed one employee represented by Local 230 who was responsible for placing the copy ads in the kiosks, cleaning the kiosks and checking for any illumination problems. This employee worked exclusively at night.

In 1988, the Employer discontinued subcontracting out this work and established its own copy change maintenance crews who work exclusively during the day. These crews consist of one Local 230-represented employee and one Local 3-represented junior mechanic. Since 1988, Local 3- and Local 230-represented employees have performed the same work of copy changing, cleaning, and nonelectrical maintenance but, in addition, Local 3 employees have performed all electrical service and maintenance work in the kiosks.

In the summer of 1990, because of increasing complaints regarding malfunctioning illumination systems in the phone kiosks, the Employer contemplated establishing a night shift to perform copy change maintenance duties focusing on the illumination problems. In either August or September 1990, the Employer's operations/labor relations officer, Murphy, first contacted Local 230's business manager, Piscitelli, to discuss the formation of the night crew. Piscitelli rejected the concept of a night shift and demanded double time for any overtime worked by Local 230-represented employees. Local 3's representative readily agreed to a night shift with the Local 3-represented employees receiving a 10-percent differential. Accordingly, in October 1990, the Employer established a night combination crew composed of one Local 3-represented helper and one Local 3-represented junior mechanic. This crew performs essentially the same work as the daytime copy change maintenance crew except that the emphasis is on resolving illumination problems.

Thereafter, sometime in April 1991, during contract negotiations between Local 230 and the Employer, Local 230 threatened that the Employer would never get a contract if it did not guarantee Local 230 seven job positions, be they day or night. Later in April, representatives of the Employer, Local 3, and Local 230

met informally at the Electric Sign Board[1] to discuss further this dispute, but a resolution was not reached. Subsequently, by letter dated May 2, 1991, to the Employer, Local 3 threatened a job action in response to the work demand made by Local 230[2] The Employer filed 8(b)(4)(D) charges on May 8 and 10 against both Unions.

B. *Work in Dispute*

The work in dispute involves the night-shift work of installing and maintaining copy advertisements with an emphasis on solving illumination problems in phone kiosks in and around the five boroughs of New York, but primarily in Manhattan.

C. *Contentions of the Parties*

The Employer and Local 3 contend that this matter is not properly before the Board because the collective-bargaining agreements between the Employer and Local 3, and the Employer and Local 230, each provide for ''an agreed upon method'' of resolving disputes through the Electric Sign Board of New York and that all parties are members of the Electric Sign Board[3] They argue that, although the parties unsuccessfully engaged in an informal attempt to use the Electric Sign Board to resolve the dispute, the parties can and should invoke the formal Electric Sign Board procedures for resolving this dispute[4] The Employer also notes that as a result of its recent collective-bargaining negotiations with Local 230 the parties entered into a side agreement regarding unresolved matters including the instant dispute. This agreement states that, ''if necessary, the parties will insist that the local NLRB Region conduct a 10(k) jurisdictional hearing to resolve the current controversy.'' The Employer and Local 3 contend that the ''if necessary'' precondition has not been met because the parties have not utilized the agreed-upon method for resolving this dispute and that the parties should be obligated to make at least one attempt at formally resolving the matter through the contractually agreed-upon method.

Local 3 also argues that since Local 230 disclaimed jurisdiction over the electrical work and it has disclaimed jurisdiction over the copy change work, and that Local 230 did not admit to having made an 8(b)(4)(D) threat, the Board lacks jurisdiction. Finally, Local 3 contends that if the Board asserts jurisdiction, the work in dispute should be awarded to employees represented by it based on skills and economy and efficiency.

Local 230 contends that at the time the Employer filed its charge a voluntary method to resolve the dispute did not exist because the applicable collective-bargaining agreement had expired. Therefore, neither the Employer nor Local 230 could file a grievance and go to the Electric Sign Board for a resolution. Local 230 also contends that it and the Employer expressly agreed, in their most recent side agreement, to have the Board resolve this dispute. Therefore, Local 230 claims that based on its collective-bargaining agreement, past practice, relative skills, and economy and efficiency, the Board should award the work in dispute to employees that it represents or, in the alternative, award the work jointly to employees represented by it and Local 3.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute. In this case, we agree with the Employer and Local 3 that both Unions' current collective-bargaining agreements with the Employer provide an agreed-upon method for the voluntary adjustment of the instant dispute[5] As set forth in those

[1] The Electric Sign Board is a single, permanent arbitration forum that has been in existence for many years and serves not only the Employer and the instant Unions but also other businesses and unions in the sign industry.

[2] Although Local 3's letter does not make a specific reference to night-shift work, an inference to that effect may be drawn because there has never been a dispute concerning the assignment of day-shift crews.

[3] Art. III, sec. (1) of Local 3's collective-bargaining agreement states in pertinent part:

> Any grievances made by the Union or its representatives shall be made to the Foreman and the Employer. In case of failure to adjust the difference, the matter shall be referred to the Electric Sign Board.

Art. X, sec. 1, of Local 230's collective-bargaining agreement states:

> A. The Union and the Employer shall take up the matter in the first instance and seek to settle same.
>
> B. In the event that no settlement is reached by the Union and the Employer, then either such party may refer the matter to the Electric Sign Board of New York, Inc. for resolution in accordance with the procedures of said Board as set forth in its constitution and By-Laws.
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> C. The decision of said Board, or of any arbitrator chosen at the request of either party, in accordance with the constitution and By-Laws and procedures of said Board, shall be final and binding upon all parties.

[4] In order to invoke the formal procedures of the Electric Sign Board, one of the parties to the dispute is required to file a formal grievance with that board. While the parties had an informal meeting with Chaloupka, executive secretary of the Electric Sign Board, none of them invoked the procedures.

[5] Although the agreements make no reference to jurisdictional disputes or a procedure to resolve them, none of the parties argues that the Electric Sign Board lacks standing to consider and resolve such disputes as may arise, like that here, between unions and employers contractually bound to submit grievances to it. Moreover, the parties' conduct in seeking informally to resolve the instant dispute through the good offices of the Electric Sign Board indicates that the parties themselves view their respective contractual grievance procedures to encompass the submission of jurisdictional disputes to that board for

agreements, either party to the contract can file a grievance and have the matter referred to the Electric Sign Board of New York for a formal resolution; and the parties have agreed that the decision of the Electric Sign Board and/or the arbitrator acting for the Board shall be final and binding upon all parties.

As noted above, the Employer and Local 230 have a side agreement to their contract regarding unresolved issues agreeing to insist that the Board resolve the instant dispute. In addition to the fact that the parties cannot confer inappropriate jurisdiction on the Board, we agree with the Employer and Local 3 that the side agreement does not supersede their current contractually agreed-upon method for resolving this dispute; it becomes operative only if the contractual procedures prove unsuccessful. We find no indication that if the agreed-upon method was used it would be incapable of resolving the instant dispute.

Accordingly, because all parties are bound to submit jurisdictional disputes to the Electric Sign Board of New York, we shall quash the notice of hearing.[6]

ORDER

The notice of hearing issued in this proceeding is quashed.

resolution. Indeed, Local 230's argument implicitly concedes as much. Its argument that no agreed-upon method exists to resolve this dispute rests on its contention that it had no contract with the Employer when the latter filed these charges, and that the Electric Sign Board was thus not then available to the parties as a grievance-resolving forum. We find no merit to that contention, inter alia, because Local 230's current agreement with the Employer, which was signed on May 30, 1991, is retroactive to April 1, 1991 (their former agreement having expired March 31, 1991). Further, Local 3's current agreement was effective on July 1, 1991, pursuant to an automatic renewal clause. All agreements between the Employer and these two Unions, both immediately past and current, contain the respective grievance procedures set forth at fn. 3 above.

[6] In light of this disposition, we find it unnecessary to pass on Local 3's disclaimer contentions as a basis for quashing the notice.